

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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IN RE CREDIT SUISSE — AOL	)	
SECURITIES LITIGATION	)	Case No. 1:02 CV 12146
-----	)	(Judge Gertner)
	)	
This document relates to:	)	
ALL ACTIONS	)	Oral Argument Requested
	)	
	)	
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**DEFENDANTS’ MOTION TO PRECLUDE THE EXPERT OPINIONS  
OF SCOTT D. HAKALA, M. LAURENTIUS MARAIS,  
BERNARD BLACK AND REINIER KRAAKMAN**

Defendants Credit Suisse Securities (USA) LLC (“CSFB”), Credit Suisse (USA), Inc. (“Credit Suisse (USA)”), Frank Quattrone, Elliott Rogers, Jamie Kiggen and Laura Martin (collectively, “Defendants”) respectfully move pursuant to Rule 702 of the Federal Rules of Evidence to preclude the expert opinions of Dr. Scott D. Hakala, Dr. M. Laurentius Marais, Professor Bernard Black and Professor Reinier Kraakman, the proposed expert witnesses of Class Representative Bricklayers and Trowel Trades International Pension Fund (“Plaintiff”).

As set forth in Defendants’ Memorandum in Support of this motion, incorporated herein, Dr. Hakala’s report must be precluded for a number of reasons, including:

- he continues to fail to control for confounding factors, and instead speculates, based on his event study, about the causes of AOL’s stock price movements on days when there were numerous, contemporaneous disclosures, even though he admits that the established techniques of financial economics provide no basis for him to do so;
- he continues to disregard the fundamental concept of market efficiency by analyzing reiterations of previously disclosed information as new “corrective disclosures,” even though in an efficient market, such as the one for AOL stock, these later disclosures should have no incremental effect on share price;

- he continues to use a poorly defined methodology, which allows him to manufacture results that cannot be replicated by other economists;
- he continues to improperly overuse “dummy variables,” leading him to determine that numerous days throughout the period from January 12, 2001 through July 24, 2002 (the “Class Period”) are “statistically significant” event dates, when, in fact, they would not be if Dr. Hakala had done his event study properly;
- he continues to base many of his opinions on sheer speculation, even when his speculation is plainly contradicted by the facts established through the voluminous documentary and testimonial record in this case;
- he cannot demonstrate through the accepted techniques of financial economics that CSFB’s research reports had any measurable effect on AOL’s stock price; and
- he cannot quantify the nonexistent market impact of Defendants’ reports based on a proxy that he constructs from the movements of AOL’s share price in response to public statements by other analysts and by AOL itself regarding information that CSFB is never alleged to have known.

Plaintiff’s efforts to redeem Dr. Hakala and address the clear deficiencies in his testimony through the rebuttal reports submitted by three new experts also fail. First, Dr. Marais, whose opinions are confined to rehabilitating Dr. Hakala’s use of dummy variables, did not actually test Dr. Hakala’s methodology or validate his results, nor did he address any of Dr. Hakala’s numerous other methodological faults. Second, Professor Black (who admitted that he agreed with Defendants’ expert Professor Deighton) failed to rebut any of Defendants’ expert evidence, failed to consider the most basic measure of reasonableness – what other analysts covering AOL were saying – even though he himself admitted that such information would have been important to his opinion, and, during his deposition, withdrew his opinion that Defendants’ AOL reports were unreasonably optimistic, because, as he candidly admitted, he had improperly based that opinion on data that did not exist at the time Defendants issued their analyst reports. Finally, Professor Kraakman – who is not a financial economist – similarly failed to rebut any of Defendants’ expert evidence and essentially disqualified himself as an expert by admitting that

he is probably no more of an expert on the academic literature on which he was opining than anyone who has read the same handful of articles that he has read (which, incidentally, he read for the first time shortly before issuing his report in this case). Moreover, Professor Kraakman's principal opinion – that the fraud-on-the-market presumption of reliance can apply to research analyst statements – addresses a legal issue that this Court has already ruled on, not a fact issue for the jury.

For these reasons, as discussed in detail in Defendants' Memorandum in Support of their Motion to Preclude, Defendants respectfully ask the Court to:

- (a) Grant their Motion to Preclude the Expert Opinions of Dr. Scott D. Hakala, Dr. M. Laurentius Marais, Prof. Bernard Black and Prof. Reinier Kraakman; and
- (b) Grant such other relief as the Court deems just and proper.

### **REQUEST FOR ORAL ARGUMENT**

Pursuant to Local Rule 7.1(D), Defendants ask that the Court grant a hearing on their Motion to Preclude.

Dated: April 20, 2009

Respectfully Submitted,

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**CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(A)(2)**

I hereby certify that counsel for Credit Suisse Securities (USA) LLC and Credit Suisse (USA), Inc. conferred with counsel for Plaintiff, and attempted in good faith to resolve or narrow the issues raised in this Motion, but we were not able to do so.

/s/ Siobhan E. Mee  
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**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF System will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and, except to the extent registered participants at the same firm(s) received copies electronically as identified on the Notice of Electronic Filing, paper copies will be sent to those indicated as non-registered participants by U.S. Mail on April 20, 2009.

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